



DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO-P-2021-0053]

Grant of Interim Extension of the Term of U.S. Patent No. 6,406,699; ECI[®] (ELIAS Cancer Immunotherapy)

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of Interim Patent Term Extension.

SUMMARY: The United States Patent and Trademark Office has issued an order granting a one-year interim extension of the term of U.S. Patent No. 6,406,699 ('699 patent).

FOR FURTHER INFORMATION CONTACT: Raul Tamayo, Senior Legal Advisor, Office of Patent Legal Administration, by telephone at 571-272-7728 or by email to raul.tamayo@uspto.gov.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 156 generally provides that the term of a patent may be extended for a period of up to five years, if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review. 35 U.S.C. 156(d)(5) generally provides that the term of such a patent may be extended for no more than five interim periods of up to one year each, if the approval phase of the regulatory review period is reasonably expected to extend beyond the expiration date of the patent.

On August 25, 2021, TVAX Biomedical I, LLC, the owner of record of the '699 patent, timely filed an application under 35 U.S.C. 156(d)(5) for a third interim extension of the term of the '699 patent. The '699 patent claims a method of using a veterinary biological product in the cancer immunotherapy treatment known by the tradename ECI® (ELIAS Cancer Immunotherapy). The application for interim patent term extension indicates that an application for a license for the veterinary biological product was submitted under the Virus-Serum-Toxin Act and is currently undergoing regulatory review by the United States Department of Agriculture, Center for Veterinary Biologics.

Review of the interim patent term extension application indicates that, except for permission to market or use the product commercially, the '699 patent would be eligible for an extension of the patent term under 35 U.S.C. 156. Because it appears the approval phase of the regulatory review period will continue beyond the extended expiration date of the '699 patent, i.e., October 5, 2021, further interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

A third interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 6,406,699 is granted for a period of one year from the extended expiration date of the '699 patent.

Robert Bahr,

Deputy Commissioner for Patents,

United States Patent and Trademark Office.

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